



Senate

General Assembly

File No. 591

January Session, 2009

Substitute Senate Bill No. 1117

Senate, April 9, 2009

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) There shall be established
2 an Office of Administrative Hearings within the Commission on
3 Human Rights and Opportunities. The office shall impartially conduct
4 hearings of contested cases in accordance with the provisions of
5 sections 2 to 9, inclusive, and section 21 of this act and chapter 54 of the
6 general statutes.

7 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) For purposes of sections 2
8 to 9, inclusive, and section 21 of this act, (1) "administrative law
9 adjudicator" means a person whose primary duties are to conduct
10 hearings in contested cases and issue final decisions or proposed final
11 decisions and who is transferred to the Office of Administrative
12 Hearings pursuant to section 4 of this act or appointed by the Chief
13 Administrative Law Adjudicator pursuant to chapter 67 of the general

14 statutes; and (2) "Chief Administrative Law Adjudicator" means the
15 administrative law adjudicator designated by the executive director of
16 the Commission on Human Rights and Opportunities to serve as Chief
17 Administrative Law Adjudicator for a term of two years.

18 (b) The Chief Administrative Law Adjudicator, administrative law
19 adjudicators, assistants and other employees of the Office of
20 Administrative Hearings shall be entitled to the fringe benefits
21 applicable to other state employees, shall be included under the
22 provisions of chapters 65 and 66 of the general statutes regarding
23 disability and retirement of state employees, and shall receive full
24 retirement credit for each year or portion thereof for which retirement
25 benefits are paid for service as such Chief Administrative Law
26 Adjudicator, administrative law adjudicator, assistant or other
27 employee.

28 Sec. 3. (NEW) (*Effective October 1, 2009*) The Chief Administrative
29 Law Adjudicator shall be the chief executive officer of the Office of
30 Administrative Hearings and shall:

31 (1) Have all of the powers specifically granted in the general statutes
32 and any additional powers that are reasonable and necessary to enable
33 the Chief Administrative Law Adjudicator to carry out the duties of his
34 or her office;

35 (2) Assign administrative law adjudicators in all cases referred to
36 the Office of Administrative Hearings, provided, in assigning an
37 administrative law adjudicator to a case, the Chief Administrative Law
38 Adjudicator shall, whenever practicable, assign an administrative law
39 adjudicator who has expertise in the legal issues or general subject
40 matter of the proceeding;

41 (3) Have all the powers and duties of an administrative law
42 adjudicator;

43 (4) Prepare an edited version of a proposed final decision and final
44 decision that shall not disclose protected information in any case

45 where any provision of the general statutes, federal law, state or
46 federal regulations, or an order of a court of competent jurisdiction
47 bars the disclosure of the identity of any person or party or bars the
48 disclosure of any other information;

49 (5) Collect, compile and prepare statistics and other data with
50 respect to the operations of the Office of Administrative Hearings and
51 submit annually to the Governor and the General Assembly a report
52 on such operations, including, but not limited to, the number of
53 hearings initiated, the number of proposed final decisions rendered,
54 the number of partial or total reversals of such decisions by the
55 agencies, the number of final decisions rendered and the number of
56 proceedings pending;

57 (6) Study the subject of administrative adjudication in all its aspects
58 and develop recommendations to promote the goals of impartiality,
59 fairness, uniformity and cost-effectiveness in the administration and
60 conduct of hearings of contested cases;

61 (7) Develop a program for the continuing education of
62 administrative law adjudicators in procedural due process and in the
63 substantive law of the agencies that are subject to the provisions of
64 section 8 of this act and training for ancillary personnel, and
65 implement such program; and

66 (8) Index, by name and subject, all written orders and final decisions
67 and make all indices, proposed final decisions and final decisions
68 available for public inspection, and copying electronically and to the
69 extent required by the Freedom of Information Act, as defined in
70 section 1-200 of the general statutes.

71 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) Notwithstanding any
72 provision of the general statutes, each full-time employee or
73 permanent part-time employee of an agency subject to the provisions
74 of section 8 of this act whose primary duties (1) are to conduct hearings
75 in contested cases and issue final decisions or proposed final decisions,
76 including, but not limited to, human rights referees, staff attorneys,

77 hearing adjudicators and hearing officers, or (2) relate to providing
78 administrative services required for conducting such hearings and
79 issuing such decisions, shall be transferred to the Office of
80 Administrative Hearings, in accordance with the provisions of this
81 section and sections 4-38d, 4-38e and 4-39 of the general statutes.

82 (b) Persons transferred to the Office of Administrative Hearings
83 pursuant to this section and persons appointed by the Chief
84 Administrative Law Adjudicator pursuant to chapter 67 of the general
85 statutes shall be in the classified service, represented by the collective
86 bargaining representative of an employee organization and subject to
87 the provisions of chapter 68 of the general statutes. Persons transferred
88 to the Office of Administrative Hearings pursuant to this section who
89 are members of an employee organization, as defined in section 5-270
90 of the general statutes, at the time of their transfer shall continue to be
91 represented by such employee organization.

92 (c) The salaries, seniority and benefits of persons transferred to the
93 Office of Administrative Hearings pursuant to this section shall not be
94 reduced as a result of the transfer.

95 (d) No promotions governed by any existing and applicable
96 memorandum of understanding between the Office of Labor Relations
97 and any collective bargaining representative for state employees shall
98 be denied, delayed, impaired or eliminated by the implementation of
99 sections 1 to 9, inclusive, of this act.

100 (e) (1) Persons transferred to the Office of Administrative Hearings
101 pursuant to this section who are members of a collective bargaining
102 unit at the time of their transfer shall (A) not lose the job classification
103 in which they are placed at the time of their transfer as a result of the
104 transfer, and (B) remain the beneficiaries of any existing and applicable
105 memorandum of understanding between the Office of Labor Relations
106 and any collective bargaining representative for state employees. The
107 rights and obligations contained in any memorandum of
108 understanding that applies to staff attorneys shall apply to
109 administrative law adjudicators transferred to the Office of

110 Administrative Hearings and appointed by the Chief Administrative
111 Law Adjudicator.

112 (2) Persons transferred to the Office of Administrative Hearings
113 pursuant to this section who are not members of a collective
114 bargaining unit at the time of their transfer, and persons appointed by
115 the Chief Administrative Law Adjudicator, shall (A) have a job
116 classification commensurate with persons who are members of a
117 collective bargaining unit at the time of their transfer, and (B) be
118 subject to and become the beneficiaries of the terms of any existing and
119 applicable memorandum of understanding between the Office of
120 Labor Relations and any collective bargaining representative for state
121 employees, including the rights and obligations contained in any
122 memorandum of understanding that applies to staff attorneys.

123 (f) Time served in other agencies by persons transferred to the
124 Office of Administrative Hearings pursuant to this section shall be
125 recognized as qualifying experience and time in the Office of
126 Administrative Hearings shall count as successful and satisfactory
127 performance for career progression under any existing and applicable
128 memorandum of understanding between the Office of Labor Relations
129 and any collective bargaining representative for state employees.

130 (g) An administrative law adjudicator, assistant or other employee
131 of the Office of Administrative Hearings who is removed, suspended,
132 demoted or subjected to disciplinary action or other adverse
133 employment action may appeal such action in accordance with the
134 applicable collective bargaining agreement.

135 Sec. 5. (NEW) (*Effective October 1, 2009*) (a) Each administrative law
136 adjudicator shall have been admitted to the practice of law in this state
137 for at least two years, except that such requirement shall not apply to
138 any administrative law adjudicator transferred pursuant to section 4 of
139 this act.

140 (b) An administrative law adjudicator shall have the powers
141 granted to hearing officers and presiding officers pursuant to sections

142 1 to 9, inclusive, and section 21 of this act and chapter 54 of the general
143 statutes.

144 Sec. 6. (NEW) (*Effective October 1, 2009*) (a) All hearings in contested
145 cases conducted by the Office of Administrative Hearings shall be
146 conducted by an administrative law adjudicator assigned by the Chief
147 Administrative Law Adjudicator and shall be conducted in accordance
148 with sections 1 to 9, inclusive, and section 21 of this act and sections 4-
149 176e to 4-181a, inclusive, of the general statutes, as amended by this
150 act.

151 (b) Unless different time limits are provided by any provision of the
152 general statutes for contested cases before an agency, the time limits
153 provided in sections 4-176e to 4-181a, inclusive, of the general statutes,
154 as amended by this act, shall apply to all contested cases conducted by
155 the Office of Administrative Hearings.

156 Sec. 7. (NEW) (*Effective October 1, 2009*) An administrative law
157 adjudicator may conduct hearings and settlement negotiations held by
158 the Office of Administrative Hearings. If a contested case is not
159 resolved through settlement negotiations, either party may proceed to
160 a hearing. An administrative law adjudicator who attempts to settle a
161 matter may not thereafter be assigned to hear the matter. If a contested
162 case is resolved by stipulation, agreed settlement or consent order, the
163 administrative law adjudicator shall issue an order dismissing the
164 contested case. The order shall incorporate by reference such
165 stipulation, agreed settlement or consent order which shall be attached
166 thereto. The order shall further provide that no findings of fact or
167 conclusions of law have been made regarding any alleged violations of
168 the law. The order and stipulation, agreed settlement or consent order
169 may be enforceable by any party in Superior Court. A party may
170 petition the superior court for the judicial district of New Britain for
171 enforcement of the order and stipulation, agreed settlement or consent
172 order and for appropriate temporary relief or a restraining order.

173 Sec. 8. (NEW) (*Effective October 1, 2009*) (a) Notwithstanding any
174 provision of the general statutes, and except as otherwise provided in

175 section 9 of this act, on and after the effective date of this section, the
176 Office of Administrative Hearings shall conduct hearings and render
177 proposed final decisions or, if authorized or required by law, final
178 decisions in contested cases:

179 (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of
180 the general statutes;

181 (2) Brought by or before the Department of Children and Families;

182 (3) Brought by or before the Department of Transportation; and

183 (4) Brought by or before the Commission on Human Rights and
184 Opportunities.

185 (b) Any agency that is not required to refer contested cases to the
186 Office of Administrative Hearings pursuant to this section may, with
187 the consent of the Chief Administrative Law Adjudicator, refer any
188 contested case brought by or before such agency, to the Office of
189 Administrative Hearings for purposes of settlement or a full
190 adjudication of the contested case by an administrative law
191 adjudicator. If an agency requests a full adjudication of the contested
192 case, the agency shall specify whether the decision shall be a final
193 decision or a proposed final decision. The agency referring the
194 contested case shall incur the cost of transcripts if the Chief
195 Administrative Law Adjudicator requests transcription services for the
196 hearing. Upon issuance of the final decision or proposed final decision,
197 the Chief Administrative Law Adjudicator shall forward the record to
198 the referring agency. The Chief Administrative Law Adjudicator, the
199 presiding officer and the Commission on Human Rights and
200 Opportunities shall not be parties to any appeal of a decision or
201 settlement conducted pursuant to this section.

202 (c) The powers, functions and duties of conducting hearings and
203 issuing decisions in contested cases enumerated in subsections (a) and
204 (b) of this section shall, on the date specified in subsection (a) of this
205 section or the date of referral in subsection (b) of this section, be

206 transferred to the Office of Administrative Hearings in accordance
207 with the provisions of sections 4-38d, 4-38e and 4-39 of the general
208 statutes.

209 (d) Any hearing officer under contract with an agency to conduct
210 hearings and issue decisions in contested cases enumerated in
211 subsections (a) and (b) of this section shall, on and after the date
212 specified in subsection (a) of this section or the date of referral in
213 subsection (b) of this section, continue to serve until all such cases
214 assigned to such hearing officer are completed, unless the Chief
215 Administrative Law Adjudicator determines that the case shall be
216 reassigned to an administrative law adjudicator.

217 (e) Nothing in this section shall be construed to apply to the State
218 Board of Mediation and Arbitration or the State Board of Labor
219 Relations.

220 (f) The Department of Children and Families shall execute any
221 requisite contract with the Office of Administrative Hearings that is
222 necessary to maintain and secure any federal or state funding or
223 reimbursement.

224 Sec. 9. (NEW) (*Effective October 1, 2009*) No administrative law
225 adjudicator may be assigned by the Chief Administrative Law
226 Adjudicator to hear a contested case with respect to:

227 (1) Any hearing that is required by federal law to be conducted by a
228 specific agency or other hearing authority; or

229 (2) Any matter where the head of the agency, or one or more of the
230 members of a multimember agency, presides at the hearing in a
231 contested case.

232 Sec. 10. Subsection (e) of section 2c-2b of the general statutes is
233 amended by adding subdivision (21) as follows (*Effective October 1,*
234 *2009*):

235 (NEW) (21) The Office of Administrative Hearings established

236 under section 1 of this act.

237 Sec. 11. Section 4-166 of the general statutes is repealed and the
238 following is substituted in lieu thereof (*Effective October 1, 2009*):

239 As used in this chapter and sections 1 to 9, inclusive, and section 21
240 of this act, unless the context otherwise requires:

241 (1) "Agency" means each state board, commission, department or
242 officer authorized by law to make regulations or to determine
243 contested cases, but does not include either house or any committee of
244 the General Assembly, the courts, the Council on Probate Judicial
245 Conduct, the Governor, Lieutenant Governor or Attorney General, or
246 town or regional boards of education, or automobile dispute
247 settlement panels established pursuant to section 42-181;

248 (2) "Contested case" means a proceeding, including but not
249 restricted to rate-making, price fixing and licensing, in which the legal
250 rights, duties or privileges of a party are required by state statute or
251 regulation to be determined by an agency or by the Office of
252 Administrative Hearings after an opportunity for hearing or in which a
253 hearing is in fact held, but does not include proceedings on a petition
254 for a declaratory ruling under section 4-176, as amended by this act,
255 hearings referred to in section 4-168 or hearings conducted by the
256 Department of Correction or the Board of Pardons and Paroles;

257 (3) "Final decision" means (A) the [agency] determination in a
258 contested case made pursuant to section 4-179, as amended by this act,
259 section 21 of this act and section 4-180, as amended by this act, (B) a
260 declaratory ruling issued by an agency pursuant to section 4-176, as
261 amended by this act, or (C) [an agency] a decision made after
262 reconsideration of a final decision. The term does not include a
263 preliminary or intermediate ruling or order, [of an agency,] or a ruling
264 [of an agency] granting or denying a petition for reconsideration;

265 (4) "Hearing officer" means an individual appointed by an agency to
266 conduct a hearing in an agency proceeding that is not conducted by an

267 administrative law adjudicator pursuant to section 8 of this act. Such
268 individual may be a staff employee of the agency;

269 (5) "Intervenor" means a person, other than a party, granted status
270 as an intervenor by an agency in accordance with the provisions of
271 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as
272 amended by this act;

273 (6) "License" includes the whole or part of any agency permit,
274 certificate, approval, registration, charter or similar form of permission
275 required by law, but does not include a license required solely for
276 revenue purposes;

277 (7) "Licensing" includes the agency process respecting the grant,
278 denial, renewal, revocation, suspension, annulment, withdrawal or
279 amendment of a license;

280 (8) "Party" means each person (A) whose legal rights, duties or
281 privileges are required by statute to be determined by an agency
282 proceeding and who is named or admitted as a party, (B) who is
283 required by law to be a party in an agency proceeding, or (C) who is
284 granted status as a party under subsection (a) of section 4-177a, as
285 amended by this act;

286 (9) "Person" means any individual, partnership, corporation, limited
287 liability company, association, governmental subdivision, agency or
288 public or private organization of any character, but does not include
289 the agency conducting the proceeding;

290 (10) "Presiding officer" means the head of the agency presiding at a
291 hearing, the member of [an] a multimember agency or the hearing
292 officer designated by the head of the agency to preside at [the] a
293 hearing, or an administrative law adjudicator presiding at a hearing;

294 (11) "Proposed final decision" means a final decision proposed by an
295 agency or a presiding officer under section 4-179, as amended by this
296 act, or section 21 of this act;

297 (12) "Proposed regulation" means a proposal by an agency under
298 the provisions of section 4-168 for a new regulation or for a change in,
299 addition to or repeal of an existing regulation;

300 (13) "Regulation" means each agency statement of general
301 applicability, without regard to its designation, that implements,
302 interprets, or prescribes law or policy, or describes the organization,
303 procedure, or practice requirements of any agency. The term includes
304 the amendment or repeal of a prior regulation, but does not include
305 (A) statements concerning only the internal management of any
306 agency and not affecting private rights or procedures available to the
307 public, (B) declaratory rulings issued pursuant to section 4-176, as
308 amended by this act, or (C) intra-agency or interagency memoranda;

309 (14) "Regulation-making" means the process for formulation and
310 adoption of a regulation;

311 (15) "Administrative law adjudicator" has the same meaning as
312 provided in section 2 of this act; and

313 (16) "Head of the agency" means the individual or group of
314 individuals constituting the highest authority within an agency.

315 Sec. 12. Subsection (g) of section 4-176 of the general statutes is
316 repealed and the following is substituted in lieu thereof (*Effective*
317 *October 1, 2009*):

318 (g) If the agency conducts a hearing in a proceeding for a
319 declaratory ruling, the provisions of [subsection (b) of section 4-177c,]
320 section 4-178, as amended by this act, and section 4-179, as amended
321 by this act, shall apply to the hearing.

322 Sec. 13. Section 4-176e of the general statutes is repealed and the
323 following is substituted in lieu thereof (*Effective October 1, 2009*):

324 Except as otherwise required by the general statutes, a [hearing in
325 an agency proceeding may be held before (1)] contested case shall be
326 heard by (1) an administrative law adjudicator, (2) the head of the

327 agency, (3) one or more of the members of a multimember agency, or
328 (4) one or more hearing officers, provided no individual who has
329 personally carried out the function of an investigator in a contested
330 case may serve as a hearing officer in that case. [, or (2) one or more of
331 the members of the agency.]

332 Sec. 14. Section 4-177 of the general statutes is repealed and the
333 following is substituted in lieu thereof (*Effective October 1, 2009*):

334 (a) In a contested case, all parties shall be afforded an opportunity
335 for hearing after reasonable notice from the agency.

336 (b) The notice shall be in writing and shall include: (1) A statement
337 of the time, place [,] and nature of the hearing or, if the contested case
338 has been referred to the Office of Administrative Hearings, a statement
339 that the matter has been referred to the Office of Administrative
340 Hearings and that the time and place of the hearing will be set by an
341 administrative law adjudicator; (2) a statement of the legal authority
342 and jurisdiction under which the hearing is to be held; (3) a reference
343 to the particular sections of the statutes and regulations involved; and
344 (4) a short and plain statement of the matters asserted. If the agency or
345 party is unable to state the matters in detail at the time the notice is
346 served, the initial notice may be limited to a statement of the issues
347 involved. Thereafter, upon application, a more definite and detailed
348 statement shall be furnished.

349 (c) After an agency refers a contested case to the Office of
350 Administrative Hearings, the agency shall certify the official record in
351 such contested case to the Office of Administrative Hearings. The
352 Office of Administrative Hearings shall issue a notice in writing to all
353 parties that shall include a statement of the time, place and nature of
354 the hearing. Thereafter, a party shall file all documents that are to
355 become part of such record with the Office of Administrative
356 Hearings. The filing of such documents with the agency rather than
357 with the Office of Administrative Hearings shall not be a jurisdictional
358 defect and shall not be grounds for termination of the proceeding,
359 provided the administrative law adjudicator may assess appropriate

360 costs and sanctions against a party who misfiles such documents on a
361 showing of prejudice resulting from a wilful misfiling. The Office of
362 Administrative Hearings shall maintain the official record of a
363 contested case referred to said office.

364 ~~[(c)]~~ (d) Unless precluded by law, a contested case may be resolved
365 by stipulation, agreed settlement ~~[.]~~ or consent order or by the default
366 of a party.

367 ~~[(d)]~~ (e) The record in a contested case shall include: (1) Written
368 notices related to the case; (2) all petitions, pleadings, motions and
369 intermediate rulings; (3) evidence received or considered; (4) questions
370 and offers of proof, objections and rulings thereon; (5) the official
371 transcript, if any, of proceedings relating to the case, or, if not
372 transcribed, any recording or stenographic record of the proceedings;
373 (6) proposed final decisions and exceptions thereto; and (7) the final
374 decision.

375 ~~[(e)]~~ (f) Any recording or stenographic record of the proceedings
376 shall be transcribed on request of any party. The requesting party shall
377 pay the cost of such transcript, unless otherwise provided by law.
378 Nothing in this section shall relieve an agency of its responsibility
379 under section 4-183, as amended by this act, to transcribe the record for
380 an appeal.

381 Sec. 15. Section 4-177a of the general statutes is repealed and the
382 following is substituted in lieu thereof (*Effective October 1, 2009*):

383 (a) The presiding officer shall grant a person status as a party in a
384 contested case if ~~[that]~~ such officer finds that: (1) Such person has
385 submitted a written petition to the agency or presiding officer, and
386 mailed copies to all parties, at least five days before the date of
387 hearing; and (2) the petition states facts that demonstrate that the
388 petitioner's legal rights, duties or privileges shall be specifically
389 affected by ~~[the agency's]~~ a decision in the contested case.

390 (b) The presiding officer may grant any person status as an

391 intervenor in a contested case if [that] such officer finds that: (1) Such
392 person has submitted a written petition to the agency or presiding
393 officer, and mailed copies to all parties, at least five days before the
394 date of hearing; and (2) the petition states facts that demonstrate that
395 the petitioner's participation is in the interests of justice and will not
396 impair the orderly conduct of the proceedings.

397 (c) The five-day requirement in subsections (a) and (b) of this
398 section may be waived at any time before or after commencement of
399 the hearing by the presiding officer on a showing of good cause.

400 (d) If a petition is granted pursuant to subsection (b) of this section,
401 the presiding officer may limit the intervenor's participation to
402 designated issues in which the intervenor has a particular interest as
403 demonstrated by the petition and shall define the intervenor's rights to
404 inspect and copy records, physical evidence, papers and documents, to
405 introduce evidence [,] and to argue and cross-examine on those issues.
406 The presiding officer may further restrict the participation of an
407 intervenor in the proceedings, including the rights to inspect and copy
408 records, to introduce evidence and to cross-examine, so as to promote
409 the orderly conduct of the proceedings.

410 Sec. 16. Section 4-177b of the general statutes is repealed and the
411 following is substituted in lieu thereof (*Effective October 1, 2009*):

412 In a contested case, the presiding officer may administer oaths, take
413 testimony under oath relative to the case, subpoena witnesses and
414 require the production of records, physical evidence, papers and
415 documents to any hearing held in the case. If any person disobeys the
416 subpoena or, having appeared, refuses to answer any question put to
417 [him] such person or to produce any records, physical evidence,
418 papers and documents requested by the presiding officer, the
419 administrative law adjudicator or, if the hearing is conducted by the
420 agency, the agency may apply to the superior court for the judicial
421 district of [Hartford] New Britain or for the judicial district in which
422 the person resides, or to any judge of that court if it is not in session,
423 setting forth the disobedience to the subpoena or refusal to answer or

424 produce, and the court or judge shall cite the person to appear before
425 the court or judge to show cause why the records, physical evidence,
426 papers and documents should not be produced or why a question put
427 to [him] such person should not be answered. Nothing in this section
428 shall be construed to limit the authority of the agency, the
429 administrative law adjudicator or any party as otherwise allowed by
430 law.

431 Sec. 17. Section 4-177c of the general statutes is repealed and the
432 following is substituted in lieu thereof (*Effective October 1, 2009*):

433 [(a)] In a contested case, each party and the agency, including an
434 agency conducting the proceeding, shall be afforded the opportunity
435 (1) to inspect and copy relevant and material records, papers and
436 documents not in the possession of the party or such agency, except as
437 otherwise provided by federal law or any other provision of the
438 general statutes, and (2) at a hearing, to respond, to cross-examine
439 other parties, intervenors [,] and witnesses, and to present evidence
440 and argument on all issues involved.

441 [(b) Persons not named as parties or intervenors may, in the
442 discretion of the presiding officer, be given an opportunity to present
443 oral or written statements. The presiding officer may require any such
444 statement to be given under oath or affirmation.]

445 Sec. 18. Section 4-178 of the general statutes is repealed and the
446 following is substituted in lieu thereof (*Effective October 1, 2009*):

447 In contested cases: (1) Any oral or documentary evidence may be
448 received, but the [agency] presiding officer shall, as a matter of policy,
449 provide for the exclusion of irrelevant, immaterial or unduly
450 repetitious evidence; (2) [agencies shall give effect to] the rules of
451 privilege recognized by law shall be given effect; (3) when a hearing
452 will be expedited and the interests of the parties will not be prejudiced
453 substantially, any part of the evidence may be received in written
454 form; (4) documentary evidence may be received in the form of copies
455 or excerpts, if the original is not readily available, and upon request,

456 parties and the agency, including an agency conducting the
457 proceeding, shall be given an opportunity to compare the copy with
458 the original; (5) a party and [such] the agency, including an agency
459 conducting the proceeding, may conduct cross-examinations required
460 for a full and true disclosure of the facts; (6) notice may be taken of
461 judicially cognizable facts; [and of] (7) in a proceeding conducted by
462 the agency or in an agency review of a proposed final decision, notice
463 may be taken of generally recognized technical or scientific facts
464 within the agency's specialized knowledge; [(7)] (8) parties shall be
465 notified in a timely manner of any material noticed, including any
466 agency memoranda or data, and they shall be afforded an opportunity
467 to contest the material so noticed; and [(8) the agency's] (9) in a
468 proceeding conducted by the agency or in an agency review of a
469 proposed final decision, the agency may use its experience, technical
470 competence [,] and specialized knowledge [may be used] in the
471 evaluation of the evidence.

472 Sec. 19. Section 4-178a of the general statutes is repealed and the
473 following is substituted in lieu thereof (*Effective October 1, 2009*):

474 If a hearing in a contested case or in a declaratory ruling proceeding
475 is held before a hearing officer or before less than a majority of the
476 members of the agency who are authorized by law to render a final
477 decision, a party, if permitted by regulation and before rendition of the
478 final decision, may request a review by a majority of the members of
479 the agency, of any preliminary, procedural or evidentiary ruling made
480 at the hearing. The majority of the members may make an appropriate
481 order, including the reconvening of the hearing. The provisions of this
482 section shall not apply to a hearing conducted by an administrative
483 law adjudicator.

484 Sec. 20. Section 4-179 of the general statutes is repealed and the
485 following is substituted in lieu thereof (*Effective October 1, 2009*):

486 (a) When, in an agency proceeding that is not conducted by an
487 administrative law adjudicator, a majority of the members of the
488 agency who are to render the final decision have not heard the matter

489 or read the record, the decision, if adverse to a party, shall not be
490 rendered until a proposed final decision is served upon the parties,
491 and an opportunity is afforded to each party adversely affected to file
492 exceptions and present briefs and oral argument to the members of the
493 agency who are to render the final decision.

494 (b) A proposed final decision made under this section shall be in
495 writing and [contain a statement of the reasons for the decision and a
496 finding of facts and conclusion of law on each issue of fact or law
497 necessary to the decision] shall comply with the requirements of
498 subsection (c) of section 4-180, as amended by this act.

499 (c) Except when authorized by law to render a final decision for an
500 agency, a hearing officer shall, after hearing a matter, make a proposed
501 final decision.

502 (d) The parties and the agency conducting the proceeding, by
503 written stipulation, may waive compliance with this section.

504 Sec. 21. (NEW) (*Effective October 1, 2009*) (a) A proposed final
505 decision rendered by an administrative law adjudicator shall be
506 delivered promptly to each party or the party's authorized
507 representative, and to the agency, personally or by United States mail,
508 certified or registered, postage prepaid, return receipt requested. After
509 such proposed final decision is rendered, the record in the contested
510 case shall be delivered promptly to the agency.

511 (b) A proposed final decision rendered by an administrative law
512 adjudicator shall become a final decision of the agency unless the head
513 of the agency, not later than twenty-one days following the date the
514 proposed final decision is delivered or mailed to the agency, modifies
515 or rejects the proposed final decision, provided the head of the agency
516 may, before expiration of such time period and for good cause, certify
517 the extension of such time period for not more than an additional
518 twenty-one days. If the head of the agency modifies or rejects the
519 proposed final decision, the head of the agency shall state the reason
520 for the modification or rejection on the record. In reviewing a proposed

521 final decision rendered by an administrative law adjudicator, the head
522 of the agency may afford each party, including the agency, an
523 opportunity to present briefs and may afford each party, including the
524 agency, an opportunity to present oral argument.

525 (c) If, within the time period provided in subsection (b) of this
526 section, the head of the agency, in reviewing a proposed final decision
527 rendered by an administrative law adjudicator, determines that
528 additional evidence is necessary, the head of the agency shall refer the
529 matter to the Office of Administrative Hearings. The Chief
530 Administrative Law Adjudicator shall assign the administrative law
531 adjudicator who rendered such proposed final decision to take the
532 additional evidence unless such administrative law adjudicator is
533 unavailable. After taking the additional evidence, the administrative
534 law adjudicator shall, not later than thirty days following such referral,
535 prepare a proposed final decision as provided in this section based on
536 such additional evidence and the record of the prior hearing.

537 (d) A proposed final decision made under this section shall be in
538 writing and shall comply with the requirements of subsection (c) of
539 section 4-180 of the general statutes, as amended by this act.

540 Sec. 22. Section 4-180 of the general statutes is repealed and the
541 following is substituted in lieu thereof (*Effective October 1, 2009*):

542 (a) Each agency and administrative law adjudicator shall proceed
543 with reasonable dispatch to conclude any matter pending before [it]
544 such agency or administrative law adjudicator and, in all hearings of
545 contested cases conducted by the agency or the administrative law
546 adjudicator, shall render a final decision within ninety days following
547 the close of evidence or the due date for the filing of briefs, whichever
548 is later. [, in such proceedings.]

549 (b) If, in any contested case, any agency or administrative law
550 adjudicator fails to comply with the provisions of subsection (a) of this
551 section, [in any contested case, any party thereto] any party to such
552 contested case may apply to the superior court for the judicial district

553 of [Hartford] New Britain for an order requiring the agency or
554 administrative law adjudicator to render a proposed final decision or a
555 final decision forthwith. The court, after hearing, shall issue an
556 appropriate order.

557 (c) A final decision in a contested case shall be in writing or, if there
558 is no proposed final decision, orally stated on the record. [and, if
559 adverse to a party,] A proposed final decision and a final decision in a
560 contested case shall include [the agency's] findings of fact and
561 conclusions of law necessary to [its] the decision and shall be made by
562 applying all pertinent provisions of law. Findings of fact shall be based
563 exclusively on the evidence in the record and on matters noticed. The
564 [agency shall state in] proposed final decision and the final decision
565 shall contain the name of each party and the most recent mailing
566 address, provided to the agency, of the party or [his] the party's
567 authorized representative. If the final decision is orally stated on the
568 record, each such name and mailing address shall be included in the
569 record.

570 (d) The final decision shall be delivered promptly to each party or
571 [his] the party's authorized representative and, in the case of a final
572 decision by an administrative law adjudicator authorized by law to
573 render such decision, to the agency, personally or by United States
574 mail, certified or registered, postage prepaid, return receipt requested.
575 [The] An agency rendering a final decision shall immediately transmit
576 a copy of such decision to the Office of Administrative Hearings. A
577 proposed final decision that becomes a final decision because of
578 agency inaction, as provided in subsection (b) of section 21 of this act,
579 shall become effective at the expiration of the time period specified in
580 said subsection or on a later date specified in such proposed final
581 decision. Any other final decision shall be effective when personally
582 delivered or mailed or on a later date specified [by the agency] in such
583 final decision. The date of delivery or mailing of a proposed final
584 decision and a final decision shall be endorsed on the front of the
585 decision or on a transmittal sheet included with the decision.

586 Sec. 23. Subsection (a) of section 4-181 of the general statutes is
587 repealed and the following is substituted in lieu thereof (*Effective*
588 *October 1, 2009*):

589 (a) Unless required for the disposition of ex parte matters
590 authorized by law, no hearing officer, administrative law adjudicator
591 or member of an agency who, in a contested case, is to render a final
592 decision or to make a proposed final decision shall communicate,
593 directly or indirectly, in connection with any issue of fact, with any
594 person or party, or, in connection with any issue of law, with any party
595 or the party's representative, without notice and opportunity for all
596 parties to participate.

597 Sec. 24. Section 4-181a of the general statutes is repealed and the
598 following is substituted in lieu thereof (*Effective October 1, 2009*):

599 (a) (1) Unless otherwise provided by law, a party or the agency in a
600 contested case may, within fifteen days after the personal delivery or
601 mailing of the final decision or within fifteen days after the date that a
602 proposed final decision becomes a final decision because of agency
603 inaction, as provided in subsection (b) of section 21 of this act, file with
604 the [agency] authority that rendered the final decision a petition for
605 reconsideration of the decision on the ground that: (A) An error of fact
606 or law should be corrected; (B) new evidence has been discovered
607 which materially affects the merits of the case and which for good
608 reasons was not presented in the agency proceeding; or (C) other good
609 cause for reconsideration has been shown. Within twenty-five days of
610 the filing of the petition, [the agency] such authority shall decide
611 whether to reconsider the final decision. The failure of [the agency]
612 such authority to make [that] such determination within twenty-five
613 days of such filing shall constitute a denial of the petition.

614 (2) Within forty days of the personal delivery or mailing of the final
615 decision, the [agency] authority that rendered the final decision,
616 regardless of whether a petition for reconsideration has been filed,
617 may decide to reconsider the final decision.

618 (3) If the [agency] authority that rendered the final decision decides
619 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of
620 this subsection, [the agency] such authority shall proceed in a
621 reasonable time to conduct such additional proceedings as may be
622 necessary to render a decision modifying, affirming or reversing the
623 final decision, provided such decision made after reconsideration shall
624 be rendered not later than ninety days following the date on which
625 [the agency] such authority decides to reconsider the final decision. If
626 [the agency] such authority fails to render such decision made after
627 reconsideration within such ninety-day period, the original final
628 decision shall remain the final decision in the contested case for
629 purposes of any appeal under the provisions of section 4-183, as
630 amended by this act.

631 (4) Except as otherwise provided in subdivision (3) of this
632 subsection, [an agency] a decision made after reconsideration pursuant
633 to this subsection shall become the final decision in the contested case
634 in lieu of the original final decision for purposes of any appeal under
635 the provisions of section 4-183, as amended by this act, including, but
636 not limited to, an appeal of (A) any issue decided by the [agency]
637 authority that rendered the final decision in its original final decision
638 that was not the subject of any petition for reconsideration or [the
639 agency's] such authority's decision made after reconsideration, (B) any
640 issue as to which reconsideration was requested but not granted, and
641 (C) any issue that was reconsidered but not modified by [the agency]
642 such authority from the determination of such issue in the original
643 final decision.

644 (b) On a showing of changed conditions, the [agency] authority that
645 rendered the final decision may reverse or modify the final decision, at
646 any time, at the request of any person or on [the agency's] such
647 authority's own motion. The procedure set forth in this chapter for
648 contested cases shall be applicable to any proceeding in which such
649 reversal or modification of any final decision is to be considered. The
650 party or parties who were the subject of the original final decision, or
651 their successors, if known, and intervenors in the original contested

652 case, shall be notified of the proceeding and shall be given the
653 opportunity to participate in the proceeding. Any decision to reverse
654 or modify a final decision shall make provision for the rights or
655 privileges of any person who has been shown to have relied on such
656 final decision.

657 (c) The [agency] authority that rendered the final decision may,
658 without further proceedings, modify a final decision to correct any
659 clerical error. A person may appeal [that] such modification under the
660 provisions of section 4-183, as amended by this act, or, if an appeal is
661 pending when the modification is made, may amend the appeal.

662 (d) For the purposes of this section and section 4-183, as amended
663 by this act, in the case of a proposed final decision that becomes a final
664 decision because of agency inaction, as provided in subsection (b) of
665 section 21 of this act, the authority that rendered the final decision
666 shall be deemed to be the agency.

667 Sec. 25. Section 4-183 of the general statutes is repealed and the
668 following is substituted in lieu thereof (*Effective October 1, 2009*):

669 (a) A person who has exhausted all administrative remedies
670 available within the agency and who is aggrieved by a final decision
671 may appeal to the Superior Court as provided in this section. The filing
672 of a petition for reconsideration is not a prerequisite to the filing of
673 such an appeal.

674 (b) A person may appeal a preliminary, procedural or intermediate
675 agency action or ruling to the Superior Court if (1) it appears likely that
676 the person will otherwise qualify under this chapter to appeal from the
677 final agency action or ruling, and (2) postponement of the appeal
678 would result in an inadequate remedy.

679 (c) (1) Within forty-five days after mailing of the final decision
680 under section 4-180, as amended by this act, or, if there is no mailing,
681 within forty-five days after personal delivery of the final decision
682 under said section, or (2) within forty-five days after the [agency]

683 authority that rendered the final decision denies a petition for
684 reconsideration of the final decision pursuant to subdivision (1) of
685 subsection (a) of section 4-181a, as amended by this act, or (3) within
686 forty-five days after mailing of the final decision made after
687 reconsideration pursuant to subdivisions (3) and (4) of subsection (a)
688 of section 4-181a, as amended by this act, or, if there is no mailing,
689 within forty-five days after personal delivery of the final decision
690 made after reconsideration pursuant to said subdivisions, or (4) within
691 forty-five days after the expiration of the ninety-day period required
692 under subdivision (3) of subsection (a) of section 4-181a, as amended
693 by this act, if [the agency] such authority decides to reconsider the final
694 decision and fails to render a decision made after reconsideration
695 within such period, or (5) if a proposed final decision becomes a final
696 decision because of agency inaction, as provided in subsection (b) of
697 section 21 of this act, within forty-five days after the decision becomes
698 final, whichever is applicable and is later, a person appealing as
699 provided in this section shall serve a copy of the appeal on the agency
700 [that rendered the final decision] at its office or at the office of the
701 Attorney General in Hartford and file the appeal with the clerk of the
702 superior court for the judicial district of New Britain or for the judicial
703 district wherein the person appealing resides or, if [that] such person is
704 not a resident of this state, with the clerk of the court for the judicial
705 district of New Britain. An appeal of a final decision under this section
706 shall be taken within such applicable forty-five-day period regardless
707 of the effective date of the final decision. Within [that] such time, the
708 person appealing shall also serve a copy of the appeal on each party
709 listed in the final decision at the address shown in the decision,
710 provided failure to make such service within forty-five days on parties
711 other than the agency [that rendered the final decision] shall not
712 deprive the court of jurisdiction over the appeal. Service of the appeal
713 shall be made by United States mail, certified or registered, postage
714 prepaid, return receipt requested, without the use of a state marshal or
715 other officer, or by personal service by a proper officer or indifferent
716 person making service in the same manner as complaints are served in
717 ordinary civil actions. If service of the appeal is made by mail, service

718 shall be effective upon deposit of the appeal in the mail.

719 (d) The person appealing, not later than fifteen days after filing the
720 appeal, shall file or cause to be filed with the clerk of the court an
721 affidavit, or the state marshal's return, stating the date and manner in
722 which a copy of the appeal was served on each party and on the
723 agency [that rendered the final decision,] and, if service was not made
724 on a party, the reason for failure to make service. If the failure to make
725 service causes prejudice to any party to the appeal or to the agency, the
726 court, after hearing, may dismiss the appeal.

727 (e) If service has not been made on a party, the court, on motion,
728 shall make such orders of notice of the appeal as are reasonably
729 calculated to notify each party not yet served.

730 (f) The filing of an appeal shall not, of itself, stay enforcement of [an
731 agency] a final decision. An application for a stay may be made to the
732 agency, to the court or to both. Filing of an application with the agency
733 shall not preclude action by the court. A stay, if granted, shall be on
734 appropriate terms.

735 (g) Within thirty days after the service of the appeal, or within such
736 further time as may be allowed by the court, the agency shall
737 transcribe any portion of the record that has not been transcribed and
738 transmit to the reviewing court the original or a certified copy of the
739 entire record of the proceeding appealed from, which shall include the
740 [agency's] findings of fact and conclusions of law, separately stated. By
741 stipulation of all parties to such appeal proceedings, the record may be
742 shortened. A party unreasonably refusing to stipulate to limit the
743 record may be taxed by the court for the additional costs. The court
744 may require or permit subsequent corrections or additions to the
745 record.

746 (h) If, before the date set for hearing on the merits of an appeal,
747 application is made to the court for leave to present additional
748 evidence, and it is shown to the satisfaction of the court that the
749 additional evidence is material and that there were good reasons for

750 failure to present it in the proceeding before the [agency] authority that
751 rendered the final decision, the court may order that the additional
752 evidence be taken before [the agency] such authority upon conditions
753 determined by the court. [The agency] Such authority may modify its
754 findings and decision by reason of the additional evidence and shall
755 file [that] such evidence and any modifications, new findings [,] or
756 decisions with the reviewing court.

757 (i) [The] Except as otherwise provided by law, the appeal shall be
758 conducted by the court without a jury and shall be confined to the
759 record. If alleged irregularities in procedure before the [agency]
760 presiding officer are not shown in the record or if facts necessary to
761 establish aggrievement are not shown in the record, proof limited
762 thereto may be taken in the court. The court, upon request, shall hear
763 oral argument and receive written briefs.

764 (j) [The] Unless a different standard of review is provided by law,
765 the court shall not substitute its judgment for that of the [agency]
766 authority that rendered the final decision as to the weight of the
767 evidence on questions of fact. The court shall affirm the final decision
768 [of the agency] unless the court finds that substantial rights of the
769 person appealing have been prejudiced because the administrative
770 findings, inferences, conclusions [,] or decisions are: (1) In violation of
771 constitutional or statutory provisions; (2) in excess of the statutory
772 authority of the agency; (3) made upon unlawful procedure; (4)
773 affected by other error of law; (5) clearly erroneous in view of the
774 reliable, probative [,] and substantial evidence on the whole record; or
775 (6) arbitrary or capricious or characterized by abuse of discretion or
776 clearly unwarranted exercise of discretion. If the court finds such
777 prejudice, [it] the court shall sustain the appeal and, if appropriate,
778 may render a judgment under subsection (k) of this section or remand
779 the case for further proceedings. For the purposes of this section, a
780 remand is a final judgment.

781 (k) If a particular agency action is required by law, the court, on
782 sustaining the appeal, may render a judgment that modifies the

783 [agency] final decision, orders the particular agency action, or orders
784 the agency to take such action as may be necessary to effect the
785 particular action.

786 (l) In all appeals taken under this section, costs may be taxed in
787 favor of the prevailing party in the same manner, and to the same
788 extent, that costs are allowed in judgments rendered by the Superior
789 Court. No costs shall be taxed against the state, except as provided in
790 section 4-184a.

791 (m) In any case in which a person appealing claims that [he] such
792 person cannot pay the costs of an appeal under this section, [he] such
793 person shall, within the time permitted for filing the appeal, file with
794 the clerk of the court to which the appeal is to be taken an application
795 for waiver of payment of such fees, costs and necessary expenses,
796 including the requirements of bond, if any. The application shall
797 conform to the requirements prescribed by rule of the judges of the
798 Superior Court. After such hearing as the court determines is
799 necessary, the court shall render its judgment on the application,
800 which judgment shall contain a statement of the facts the court has
801 found, with its conclusions thereon. The filing of the application for the
802 waiver shall toll the time limits for the filing of an appeal until such
803 time as a judgment on such application is rendered.

804 Sec. 26. Subsection (e) of section 1-82a of the general statutes is
805 repealed and the following is substituted in lieu thereof (*Effective*
806 *October 1, 2009*):

807 (e) The judge trial referee shall make public a finding of probable
808 cause not later than five business days after any such finding. At such
809 time the entire record of the investigation shall become public, except
810 that the Office of State Ethics may postpone examination or release of
811 such public records for a period not to exceed fourteen days for the
812 purpose of reaching a stipulation agreement pursuant to subsection
813 [(c)] (d) of section 4-177, as amended by this act. Any such stipulation
814 agreement or settlement shall be approved by a majority of those
815 members present and voting.

816 Sec. 27. Subsection (e) of section 1-93a of the general statutes is
817 repealed and the following is substituted in lieu thereof (*Effective*
818 *October 1, 2009*):

819 (e) The judge trial referee shall make public a finding of probable
820 cause not later than five business days after any such finding. At such
821 time, the entire record of the investigation shall become public, except
822 that the Office of State Ethics may postpone examination or release of
823 such public records for a period not to exceed fourteen days for the
824 purpose of reaching a stipulation agreement pursuant to subsection
825 [(c)] (d) of section 4-177, as amended by this act. Any stipulation
826 agreement or settlement entered into for a violation of this part shall be
827 approved by a majority of its members present and voting.

828 Sec. 28. (*Effective October 1, 2009*) On or before January 6, 2011, the
829 Legislative Program Review and Investigations Committee shall
830 submit to the joint standing committee of the General Assembly
831 having cognizance of matters relating to the judiciary a feasibility
832 analysis and implementation plan for the transfer of contested cases
833 conducted by the Department of Social Services to the Office of
834 Administrative Hearings.

835 Sec. 29. Subsection (a) of section 46a-57 of the general statutes is
836 repealed and the following is substituted in lieu thereof (*Effective*
837 *October 1, 2009*):

838 (a) (1) The Governor shall appoint three human rights referees for
839 terms commencing October 1, 1998, and four human rights referees for
840 terms commencing January 1, 1999. The human rights referees so
841 appointed shall serve for a term of one year.

842 (2) (A) On and after October 1, 1999, the Governor shall appoint
843 seven human rights referees with the advice and consent of both
844 houses of the General Assembly. The Governor shall appoint three
845 human rights referees to serve for a term of two years commencing
846 October 1, 1999. The Governor shall appoint four human rights
847 referees to serve for a term of three years commencing January 1, 2000.

848 Thereafter, human rights referees shall serve for a term of three years.

849 (B) On and after July 1, 2001, there shall be five human rights
 850 referees. Each of the human rights referees serving on July 1, 2001,
 851 shall complete the term to which such referee was appointed.
 852 Thereafter, human rights referees shall be appointed by the Governor,
 853 with the advice and consent of both houses of the General Assembly,
 854 to serve for a term of three years.

855 (C) On and after July 1, 2004, there shall be seven human rights
 856 referees. Each of the human rights referees serving on July 1, 2004,
 857 shall complete the term to which such referee was appointed and shall
 858 serve until his successor is appointed and qualified. Thereafter, human
 859 rights referees shall be appointed by the Governor, with the advice and
 860 consent of both houses of the General Assembly, to serve for a term of
 861 three years.

862 (D) On and after October 1, 2009, there shall be six human rights
 863 referees. Each of the human rights referees serving on October 1, 2009,
 864 shall complete the term for which such referee was appointed.
 865 Thereafter, human rights referees shall be appointed by the Governor,
 866 with the advice and consent of both houses of the General Assembly,
 867 to serve for a term of three years.

868 (3) When the General Assembly is not in session, any vacancy shall
 869 be filled pursuant to the provisions of section 4-19. The Governor may
 870 remove any human rights referee for cause.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	New section
Sec. 2	October 1, 2009	New section
Sec. 3	October 1, 2009	New section
Sec. 4	October 1, 2009	New section
Sec. 5	October 1, 2009	New section
Sec. 6	October 1, 2009	New section
Sec. 7	October 1, 2009	New section

Sec. 8	<i>October 1, 2009</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2009</i>	2c-2b(e)
Sec. 11	<i>October 1, 2009</i>	4-166
Sec. 12	<i>October 1, 2009</i>	4-176(g)
Sec. 13	<i>October 1, 2009</i>	4-176e
Sec. 14	<i>October 1, 2009</i>	4-177
Sec. 15	<i>October 1, 2009</i>	4-177a
Sec. 16	<i>October 1, 2009</i>	4-177b
Sec. 17	<i>October 1, 2009</i>	4-177c
Sec. 18	<i>October 1, 2009</i>	4-178
Sec. 19	<i>October 1, 2009</i>	4-178a
Sec. 20	<i>October 1, 2009</i>	4-179
Sec. 21	<i>October 1, 2009</i>	New section
Sec. 22	<i>October 1, 2009</i>	4-180
Sec. 23	<i>October 1, 2009</i>	4-181(a)
Sec. 24	<i>October 1, 2009</i>	4-181a
Sec. 25	<i>October 1, 2009</i>	4-183
Sec. 26	<i>October 1, 2009</i>	1-82a(e)
Sec. 27	<i>October 1, 2009</i>	1-93a(e)
Sec. 28	<i>October 1, 2009</i>	New section
Sec. 29	<i>October 1, 2009</i>	46a-57(a)

Statement of Legislative Commissioners:

The definition of "administrative law adjudicator" in subdivision (15) of section 11 was revised for consistency with the same term in subsection (a) of section 2.

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Human Rights & Opportunities, Com.; Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	95,000	94,000
Human Rights & Opportunities, Com.; Comptroller Misc. Accounts (Fringe Benefits)	GF - Savings	107,500	107,500
Legislative Mgmt.	GF - None	None	None
Transfer from CHRO, DCF, and DOT	GF - None	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes a new office (the Office of Administrative Hearings or OAH) within the Commission on Human Rights and Opportunities and transfers existing personnel to OAH. It is anticipated that a state cost would be incurred to raise the salaries of hearing officers once they are designated as administrative law adjudicators under the bill and subject to the bill's stricter credentials.² These costs would be offset by the bill's elimination of one vacant, funded position within CHRO, resulting in a net savings of \$12,500 in FY 10 and \$13,500 in FY 11. It is anticipated that no additional office

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

² Estimated annual cost for the salary differential of 14 hearing officers = \$75,000.

space would be required.

Transfer of Personnel

The bill reassigns hearing officers and support staff from the Commission on Human Rights and Opportunities, Department of Children and Families, and Department of Transportation. It is estimated that fourteen staff members (including 6 from the CHRO) would be reassigned to the OAH under this provision. These reassignments would necessitate the transfer of approximately \$750,000 from the Departments of Transportation and Children and Families to the CHRO in order to support the salaries of these transferred staff members.

Establishment of the OAH is expected to yield efficiencies in the processing of cases. However, it is uncertain to what extent this will result in budgetary savings to offset the certain costs indicated above.

CHRO Savings

The bill eliminates one Human Rights Referee position within the Commission on Human Rights and Opportunities (CHRO). This will result in a savings of \$86,000 to CHRO and \$21,870 to the Comptrollers Office for fringe benefits.

Section 28 requires, on or before 1/6/11, the Program and Investigations Committee to conduct a feasibility analysis and implementation plan for the transfer of contested cases from the DSS to the OAH. It is anticipated that this could be accommodated without requiring additional resources.

It should be noted that sHB 6365 (Appropriations Budget) eliminates the Public Hearing Office of CHRO, including 6 Human Rights Referees and 1 Secretary.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future until 2014 when the program sunsets in

accordance with the bill.

OLR Bill Analysis**sSB 1117*****AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.*****SUMMARY:**

This bill establishes an Office of Administrative Hearings (OAH) within the Commission on Human Rights and Opportunities (CHRO) until July 1, 2014 unless it is reestablished. The bill requires OAH to impartially conduct contested case hearings for CHRO and the departments of Children and Families and Transportation. The bill transfers certain personnel, including hearing officers, from these agencies to OAH.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedure Act (UAPA), including the time limits under the UAPA unless otherwise provided by law. After the hearings, the bill requires OAH to issue a proposed final decision or final decision, if allowed or required by law. Any proposed final decision may be rejected, modified, or accepted by the referring agency. It becomes final if the agencies fail to act within a specified period.

The bill makes several changes to the UAPA. Most of the changes are conforming ones made necessary by the new office's role in contested cases.

The bill reduces the number of human rights referees from seven to six beginning October 1, 2009. Each referee serving on that date must complete his or her term. Thereafter, just as under current law, the governor appoints the referees with the advice and consent of the General Assembly, to serve three-year terms.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2009

OFFICE OF ADMINISTRATIVE HEARINGS

Staff (§§ 2-5)

Chief Administrative Law Adjudicator. The bill requires the CHRO executive director to designate an administrative law adjudicator (ALA) to serve as the office's full-time chief executive officer for a term of two years.

The chief ALA has all the powers specifically granted by law and any additional powers that are reasonable and necessary for him or her to carry out his or her duties. Additionally, the chief ALA has all the powers and duties of an ALA. An ALA is someone (1) primarily responsible for conducting contested case hearings and issuing final decisions or proposed final decisions, (2) transferred to OAH pursuant to the bill, and (3) appointed by the chief ALA.

The chief ALA must:

1. assign an ALA to hear each case referred to OAH and, where practicable, base the assignment on expertise in the legal issues or general subject matter of the proceeding;
2. prepare a proposed final decision or, where applicable, a final decision that keeps protected information, including the identity of any person or party, confidential if required by law, regulations, or court order;
3. collect, compile, and prepare statistics and other data on OAH's operations and annually report to the governor and the legislature on such operations, including the number of (a) hearings initiated, (b) proposed final decisions rendered, (c) partial or total reversals of such decisions by the agencies, (d) final decisions rendered, and (e) proceedings pending;
4. study all aspects of administrative adjudication and develop

recommendations to promote impartiality, fairness, uniformity, and cost-effectiveness in the administration and conduct of contested cases;

5. develop and implement a program for (a) the continuing education of ALAs in procedural due process and the substantive law of their referring agencies and (b) training ancillary personnel; and
6. index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions, and final decisions available for public inspection and copying electronically as the Freedom of Information Act requires.

Other Staff. As the office's chief executive officer, the chief ALA can hire staff. The bill transfers to OAH certain full-time and permanent part-time employees from the agencies whose cases the office will hear. The transferred employees are those primarily responsible for (1) conducting hearings in contested cases and issuing final decisions or proposed final decisions, including human rights referees, staff attorneys, hearing adjudicators, and hearing officers, and (2) providing administrative services required for conducting the hearings and issuing the decisions.

Each ALA, other than those transferred from other agencies, must be admitted to the practice of law in this state for at least two years. ALAs have the powers granted to hearing officers and presiding officers.

Job Classifications and Benefits. The chief ALA, ALAs, assistants, and other OAH employees (1) are entitled to the same fringe benefits as other state employees, (2) are included in state employees' disability and retirement programs, and (3) receive full retirement credit for work completed each year or portion thereof for which retirement benefits are paid.

Transferees and chief ALA appointees are in the classified service

and covered by collective bargaining. Those transferred employees who are members of an employee organization at the time of their transfer continue to be represented by that organization.

Transferred employees cannot have their seniority, salaries, or benefits reduced because of the transfer. They get credit for time served in other agencies.

Transferred employees who are members of a collective bargaining unit at the time of their transfer remain the beneficiaries of any existing and applicable memorandum of understanding (MOU) between the Office of Labor Relations and any collective bargaining representative for state employees. These employees cannot lose the job classifications they had when they were transferred. And no promotions governed by any existing MOU between the Office of Labor Relations and any collective bargaining representative for these employees can be denied, delayed, impaired, or eliminated because of OAH's establishment or the transfer of personnel to it. MOU provisions on the rights and obligations of staff attorneys also apply to transferred ALAs.

Transferees who are not members of a collective bargaining unit at the time of their transfer and employees the chief ALA hires must (1) have the same job classifications as transferees who are members of a collective bargaining unit at the time of their transfer and (2) be subject to, and become the beneficiaries of, the terms of any existing and applicable MOU between the Office of Labor Relations and any collective bargaining representative for state employees, including the rights and obligations contained in any MOU that applies to staff attorneys.

An ALA, assistant, or other OAH employee who is removed, suspended, demoted, or subjected to disciplinary action or other adverse employment action may appeal the action in accordance with the applicable collective bargaining agreement.

Types of Cases Heard (§§ 8 & 28)

Beginning October 1, 2009, the bill requires OAH to conduct

hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases brought by or before the:

1. Department of Children and Families (DCF);
2. Department of Transportation; and
3. Commission on Human Rights and Opportunities, including allegations of retaliation against whistleblowers.

On that same date, the powers, functions, and duties of the referring agencies with respect to their contested cases transfer to OAH. Additionally, DCF must execute any requisite contract with OAH necessary to maintain and secure any federal or state funding or reimbursement. However, the bill requires any hearing officer under contract with an agency to conduct hearings and issue decisions in contested cases of the type to be referred to complete their cases unless the chief ALA decides to reassign the cases to ALAs.

Any other agency can, with the chief ALA's consent, refer contested cases to OAH for settlement or a full adjudication. Any agency that requests a full adjudication of the contested case must specify whether the decision will be a final decision or a proposed final decision. The agency referring the contested case incurs the cost of transcripts if the chief ALA requests transcription services for the hearing. Upon issuance of the final decision or proposed final decision, the chief ALA must forward the record to the referring agency. The powers, functions, and duties of these agencies transfer on the dates of the referrals.

The chief ALA, the presiding officer, and CHRO cannot be parties to any appeal of a decision or settlement the OAH conducts.

By January 6, 2011, the bill requires the Program Review and Investigations Committee to submit to the Judiciary Committee a feasibility analysis and implementation plan for the transfer of contested cases conducted by the Department of Social Services to

OAH.

The bill specifies that its section on the types of transferred cases OAH hears, the people allowed to hear them, and their powers and duties do not apply to the State Board of Mediation and Arbitration or the State Board of Labor Relations.

Hearings (§§ 7, 9, & 14)

The bill requires agencies that refer their cases to OAH to certify the official record in each case, and give the parties notice of the referral and that an ALA will set the time and place of the hearings. OAH must give the notice and also include in it the nature of the hearing. Thereafter, a party must file all documents that are to become part of the record with OAH. Filing these documents with the agency, rather than with OAH, is not a jurisdictional defect and is not grounds for termination of the proceeding. However, the ALA may assess appropriate costs and sanctions against a party who misfiles the documents on a showing of prejudice resulting from a willful misfiling. OAH must maintain the official record of a contested case referred to it.

An ALA assigned by the chief ALA must hear or settle any contested case before OAH. The bill prohibits the chief ALA from assigning an ALA to hear (1) a contested case that federal law requires to be conducted by a specific agency or other hearing authority or (2) any matter conducted by an agency head or at least one member of a multimember agency.

The bill requires ALAs to conduct hearings in accordance with the bill and the UAPA. This means, among other things, that the UAPA's definitions apply to all contested cases conducted by OAH.

If a contested case is not resolved through settlement negotiations, either party may proceed to a hearing. An ALA who attempts to settle a matter may not thereafter be assigned to hear it. An ALA must dismiss any case resolved by stipulation, agreed settlement, or consent order. The order of dismissal must incorporate by reference and have

attached to it the stipulation, agreed settlement, or consent order. The order must further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. A party may petition the New Britain Superior Court to enforce the order and stipulation, agreed settlement, or consent order and for appropriate temporary relief or a restraining order.

Proposed and Final Decisions (§§ 21 & 23)

An ALA's proposed final decision must be in writing, comply with the UAPA's requirement for final decisions, and be delivered, either personally or by registered or certified mail, return receipt requested, promptly to each party or the party's authorized representative and to the agency. After the ALA renders the proposed final decision, the case records must be delivered promptly to the agency.

An ALA's proposed final decision becomes the agency's final decision unless the agency head modifies or rejects it within 21 days after it is delivered or mailed. The agency head may, before the expiration of the period and for good cause, extend the 21-day deadline for up to 21 additional days. In the event of agency inaction, the proposed final decision is effective not later than 21 days after it is delivered or mailed or at a later date specified in the proposed final decision. In this case, a party or the agency has 15 days after the proposed decision becomes final to ask for reconsideration. A person appealing the decision has 45 days after it becomes final to serve a copy of the appeal on the agency or the attorney general's Hartford office and file the appeal (see below).

When reviewing an ALA's proposed final decision, the head of the agency may give the parties, including the agency, an opportunity to present briefs and oral argument. If the agency head determines that additional evidence is necessary, he or she must refer the matter to OAH. The chief ALA must assign the ALA who rendered the proposed decision to take the additional evidence unless the ALA is unavailable. The ALA has 30 days after the referral to take the additional evidence and prepare a proposed final decision based on it

and the record of the prior hearing.

If the head of the agency modifies or rejects the proposed final decision, he or she must state the reason for doing so on the record. An agency must immediately transmit to OAH a copy of any final decision it renders, apparently regardless of whether the new office has jurisdiction over the matter.

Definitions (§ 11)

The bill amends the definition of terms defined under the UAPA as necessary to conform to the bill, extends the definitions to the bill unless the context requires otherwise, and defines ALA and head of agency under the UAPA. For example, a “contested case,” in addition to being a proceeding in which the legal rights, duties, or privileges of a party are required by state statute or regulation to be determined by an agency, also means such proceedings determined by OAH. “Hearing officer” continues to mean a person appointed by an agency to conduct a hearing in an agency proceeding unless the proceeding is conducted by an ALA. “Final decision” means, among other things, an agency or OAH determination in a contested case.

The bill defines “administrative law adjudicator” as an administrative law judge (ALJ) transferred or appointed as specified under the bill and “head of the agency” as the individual or group of individuals constituting the highest authority within an agency. Apparently, the reference to ALJs means ALAs because (1) it is unclear whether any ALJs will be transferred under the bill and (2) the bill allows the chief ALA to hire ALAs, not ALJs.

Nonparties (§§ 12 & 17)

The bill eliminates the authority of a presiding officer in a contested case or a hearing in a proceeding for a declaratory ruling to allow people not named as parties or intervenors to present oral or written statements.

Contested Cases (§§ 16, 18-20, & 22)

The bill makes numerous changes to the UAPA’s provisions on

contested cases. Specifically, the bill:

1. extends to agencies reviewing proposed final decisions the authority agencies hearing contested cases have to (a) take notice of generally recognized technical or scientific facts within their specialized knowledge and (b) use their experience, technical competence, and specialized knowledge when evaluating evidence;
2. creates an exception for hearings conducted by OAH to provisions of the UAPA regarding decisions made by less than all members of multi-member agencies (e.g., authorizing parties to request a majority of the members to review preliminary, procedural, or evidentiary rulings before a final decision or proposed final decisions);
3. allows agencies or OAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court;
4. allows a party to a contested case who does not receive a final decision within 90 days after the close of evidence or the filing of briefs, whichever is later, to apply to the New Britain, rather than Hartford, Superior Court for an order requiring the authority presiding over the case to render a proposed final decision right away;
5. requires a final decision to be stated orally on the record as opposed to written only in cases where there is no proposed final decision, and requires the record of oral decisions to include the names and addresses of all parties;
6. requires all proposed final and final decisions, instead of just final decisions adverse to a party, to apply pertinent laws and include the findings of fact and conclusions of law;
7. requires that the date a proposed final or final decision is delivered or mailed be endorsed on the front of the decision or on a transmittal sheet included with it; and

8. allows agencies to waive transcript costs if provided by law.

APPEALING A FINAL DECISION (§§ 24 & 25)

By law, a party in a contested case may file a petition with the deciding agency for reconsideration or modification of a final decision, or file an appeal to Superior Court after exhausting all administrative remedies. In cases of agency inaction, the bill specifies that the agency that issued the final decision is the agency in which the petition must be filed and where all administrative processes must be exhausted. In the case of proposed final decisions issued by OAH, this means the agency for which OAH issued the proposed decision.

The UAPA contains several dates from which a party has 45 days to appeal a final decision to Superior Court. The bill specifies that appeals must be taken within the applicable 45-day period regardless of a final decision's effective date.

The bill also adds another date to the list of dates to address decisions issued by OAH. When OAH issues a proposed final decision that becomes a final decision due to agency inaction, the bill gives parties 45 days after the decision becomes final to file an appeal.

Lastly, under current law all appeals must be conducted by the court without a jury and the court cannot substitute its judgment for that of the authority that rendered the final decision. The bill allows (1) for jury trials in appeals from final decisions if provided by law and (2) substitutions if the law provides a different standard of review.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15 Nay 0 (03/25/2009)